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UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

- - -

HONORABLE CONSUELO B. MARSHALL,  
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

GLOBEFILL INCORPORATED, a	)	
Canadian corporation	)	
	)	CERTIFIED COPY
PLAINTIFF,	)	
	)	CV 10-2034 CBM
VS.	)	
	)	
ELEMENTS SPIRITS, INC., a	)	
California corporation, and	)	
KIM BRANDI, an individual,	)	
	)	
DEFENDANTS.	)	
-----	)	

TRIAL DAY EIGHT - VERDICT  
REPORTER'S TRANSCRIPT OF PROCEEDINGS  
FRIDAY, MARCH 29, 2017  
A.M. SESSION  
LOS ANGELES, CALIFORNIA

SHERI S. KLEEGER, CSR 10340  
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WITNESS DIRECT CROSS REDIRECT RECROSS  
(NONE OFFERED.)

NUMBER PAGE

1 LOS ANGELES, CALIFORNIA; FRIDAY, MARCH 24, 2017

2 A.M. SESSION

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5 THE CLERK: Calling item No. 1, case number  
6 CV-10-2034: Globefill Incorporated versus Elements  
7 Spirits, Incorporated, et al.

8 Counsel, please state your appearance.

9 MR. BERG: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. BERG: David Berg for Globefill.

12 I'm here with my partners Jenny Kim, Mike  
13 Fay, our colleagues Zenobia Bivens, Vickie Mery, and our  
14 local counsel and friend Mr. Hernan Vera. I almost  
15 forgot. Thank you.

16 THE COURT: Good morning to all.

17 MR. HUMMEL: He has a football team.

18 Good morning, Your Honor.

19 Keith Hummel for Elements Spirits.

20 With me is Thomas Rafferty and Rebecca  
21 Rettig.

22 THE COURT: Good morning.

23 MR. MILLER: Good morning, Your Honor.

24 Jon Miller for Kim Brandi.

25 THE COURT: Good morning.

1                   So there is a note from the jury. It is  
2 Note No. 2.

3                   If you remember, Note No. 1 was the note  
4 advising us of the foreperson and the hours that the  
5 jury expected to be working today.

6                   So this is Note 2, and it says the jury has  
7 reached a unanimous verdict. And so we just -- I just  
8 wanted to advise counsel that we have the note.

9                   The clerk will bring the jury in. They will  
10 be seated in the jury box. I'll take a look at the  
11 verdict. And if I feel that it's in the form that it  
12 should be, in other words, they have unanimously  
13 answered Question No. 1 and Question No. 2, if it's  
14 necessary for them to answer that, then the verdict will  
15 be read.

16                   If either side wishes to have the jury  
17 polled, I will ask you that question. We'll poll them  
18 if you wish. And if everything is in order, then the  
19 Court would thank and excuse the jury.

20                   Yesterday, I did raise with the parties if  
21 there is another phase or additional evidence to be  
22 presented when you wanted to do that.

23                   I'm available to do it today. I'm also  
24 available tomorrow. And I was interested in a time  
25 estimate. So I don't know if you had time to discuss

1     that.

2                   MR. BERG:   Your Honor, I think I speak for  
3     both sides.   We would like to submit papers instead of  
4     an evidentiary hearing.   The facts are pretty -- we  
5     believe are pretty cut and dry.

6                   Mr. Fay, do you agree with that?

7                   MR. FAY:   Yes, Your Honor.   I spoke with  
8     counsel today, and I think maybe the best way to do it  
9     would be to submit some argument with supporting  
10    exhibits, and then maybe there will be a need for an  
11    evidentiary hearing.   But I think that the principal  
12    issues between the parties are legal.

13                  THE COURT:   All right.   If that's agreeable,  
14    then after the jury is excused, we can then talk about  
15    when to expect the briefs.

16                  But does counsel also agree?

17                  MR. HUMMEL:   It's agreeable to Elements,  
18    Your Honor.

19                  THE COURT:   Okay.   And then is Brandi  
20    involved in this issue as well?

21                  MR. MILLER:   I don't believe so, Your Honor.  
22    But --

23                  THE COURT:   What do the plaintiffs think?  
24    Or have you not --

25                  MR. FAY:   Well, there's two factual issues,

1 Your Honor. One would be, you know, the facts relating  
2 to any request for a disgorgement and the other would be  
3 attorney fees.

4 THE COURT: Okay.

5 MR. FAY: So I think the facts related to  
6 disgorgement, that's documentation we received from  
7 Elements. And attorney fees is obviously something that  
8 we have to provide them. And we discussed the  
9 possibility we might even agree on a number and then  
10 disagree on the law.

11 THE COURT: Okay. Well, that's acceptable  
12 to me. And then after I receive the briefs, then if I  
13 felt that an evidentiary hearing was needed or if either  
14 of you felt it was needed, then the Court could schedule  
15 it.

16 But I'm not planning to do that today or  
17 tomorrow, and so that's why I raised the question.

18 All right. We're ready to have the clerk  
19 escort the jury in, please.

20 And so while the clerk is doing that, I just  
21 want to compliment counsel in the case. I thought that  
22 both sides did an excellent job representing the clients  
23 that you represent.

24 Sometimes clients don't have the opportunity  
25 to see the representation. They don't always understand

1 the issues. But I just wanted to congratulate for you a  
2 job well done.

3 MR. BERG: Thank you, Your Honor.

4 MR. HUMMEL: Thank you, Your Honor.

5 MS. KIM: Thank you, Your Honor.

6 (THE JURORS ENTER THE COURTROOM.)

7 THE COURT: The record should reflect that  
8 we do have our eight deliberating jurors seated in the  
9 courtroom.

10 I have a Jury Note No. 2. It indicates the  
11 jury has reached a unanimous verdict.

12 So the portable mic should be with the  
13 foreperson. And I will ask him to state his name for  
14 the record and then advise the Court if it is true that  
15 the jury has reached a unanimous verdict.

16 So where is that portable mike?

17 JURY FOREPERSON: Thanks very much.

18 THE COURT: Would you state your name for  
19 the record, please.

20 JURY FOREPERSON: Yeah, I'm Mathew Humphry.

21 THE COURT: And you are the foreperson of  
22 the jury?

23 JURY FOREPERSON: Yes, Your Honor.

24 THE COURT: And is it correct that the jury  
25 has reached a unanimous verdict?



1 JURY FOREPERSON: Yes.

2 THE COURT: So if you will give the verdict  
3 form to the bailiff, he'll give it to the clerk and I  
4 will review it.

5 JURY FOREPERSON: Okay.

6 THE COURT: The clerk will read the verdict.

7 THE CLERK: United States District Court,  
8 Central District of California.

9 Globefill Incorporated, plaintiff versus  
10 Elements Spirits, Incorporated, and Kim Brandi  
11 defendants. Case No. 10-2034-CBM-PLA.

12 Court's Verdict Form.

13 We the jury unanimously find as follows:

14 Number 1, do you find the defendants used a  
15 trade dress in a manner that is likely to cause  
16 confusion among ordinary consumers as to the sources,  
17 sponsorship, affiliation, or approval of the parties'  
18 goods?

19 See Court Instruction No. 19.

20 As to defendant Elements Spirits,  
21 Incorporated, the answer is yes.

22 As to defendant Kim Brandi, the answer is  
23 yes.

24 If you answered yes to Question 1, proceed  
25 to Question 2.

1                   Question 2, do you find the defendants used  
2                   the trade dress wilfully or intentionally?

3                   See Court Instruction No. 21.

4                   As to defendant Elements Spirits,  
5                   Incorporated the answer is yes.

6                   As to defendant Kim Brandi, the answer is  
7                   yes.

8                   Dated March 29, 2017.

9                   Signed by the foreperson of the jury.

10                  THE COURT: Either side wish to have the  
11                  jury polled?

12                  MR. HUMMEL: Yes, Your Honor.

13                  THE COURT: If the clerk --

14                  MR. BERG: We do not, Your Honor.

15                  THE COURT: All right. If the clerk will  
16                  begin.

17                  MR. BERG: We defer to counsel.

18                  THE CLERK: Juror No. 1, is the verdict as  
19                  presented and read your verdict?

20                  JUROR NO. 1: Yes.

21                  THE CLERK: Juror No. 2, is the verdict as  
22                  presented and read your verdict?

23                  JUROR NO. 2: Yes.

24                  THE CLERK: Juror No. 3, is the verdict as  
25                  presented and read your verdict?

1 JUROR NO. 3: Yes.

2 THE CLERK: Juror No. 4, is the verdict as  
3 presented and read your verdict?

4 JUROR NO. 4: Yes.

5 THE CLERK: Juror No. 5, is the verdict as  
6 presented and read your verdict?

7 JUROR NO. 5: Yes.

8 THE CLERK: Juror No. 6, is the verdict as  
9 presented and read your verdict?

10 JUROR NO. 6: Yes.

11 THE CLERK: Juror No. 7, is the verdict as  
12 presented and read your verdict?

13 JUROR NO. 7: Yes.

14 THE CLERK: Juror No. 8, is the verdict as  
15 presented and read your verdict?

16 JUROR NO. 8: Yes.

17 THE COURT: All answered yes.

18 So at this time, unless there are matters  
19 that counsel wishes to raise with the Court, the Court  
20 would intend to thank and excuse the jury.

21 Anything further from the plaintiffs?

22 MR. FAY: No, Your Honor.

23 MR. BERG: Just our thanks to the jury for  
24 all their service and their decision.

25 Thank you so much.

1 THE COURT: And the defendants?

2 MR. HUMMEL: The same, Your Honor.

3 Thank you for your service.

4 THE COURT: Mr. Miller.

5 MR. MILLER: Thank you.

6 THE COURT: So you have fulfilled the duties  
7 and responsibilities that you promised that you would  
8 fulfill when you took your oath as jurors.

9 You listened to all the evidence in the  
10 case, listened to the arguments of counsel, the  
11 instructions of law, and then given the exhibits that  
12 were received into evidence and sent into the jury room  
13 to deliberate. You have done so, and now returned a  
14 verdict.

15 So you are now excused from the case.

16 And if you are curious about further jury  
17 obligations or whether you will be summoned again this  
18 year, or questions of that type, those can be answered  
19 for you by someone in the jury assembly room.

20 So you can go to that location. They can  
21 answer those questions. On the other hand, you can  
22 communicate with them in some other way now if you wish  
23 to do so.

24 You have jury badges that do need to be  
25 returned. So I will just the courtroom deputy can they

1 return those here, or do they need to go to the jury  
2 assembly room for that purpose?

3 THE CLERK: They can return them to the  
4 assembly room.

5 THE COURT: All right. It looks like you  
6 need to go there anyway.

7 Now that you have been excused from the  
8 case, you are free to discuss, do research, talk about  
9 all of those things that you were precluded from doing  
10 while you were serving as a juror in the case.

11 But I always caution the jurors. We,  
12 meaning the Court, the lawyers, are not permitted to  
13 attempt to question you about how you reached the  
14 verdict.

15 So it is fine for you to speak with the  
16 attorneys in the case, if you wish to do so. Fine for  
17 you to speak with the Court. But neither the Court nor  
18 counsel will ask you: How did you arrive at this  
19 verdict?

20 That is something that we are not permitted  
21 to do, and we will not make that inquiry.

22 There are times, though, that we can learn  
23 valuable lessons from the jury that help us, certainly  
24 helpful to the Court as I impanel other jurors, and  
25 helpful to counsel to the extent that they have other

1 trials that they may be presenting to jurors.

2 For example, for me, yesterday I had not  
3 thought about the fact that when you already have a jury  
4 that's been impaneled but continuing to hear evidence on  
5 a Tuesday, Tuesday being that day when we summon new  
6 jurors, that there is a very long line downstairs, and  
7 some arrangement should probably be made for those who  
8 are already serving to enter the courthouse.

9 So that is something that I will speak with  
10 the security about so that we can take care of that. So  
11 that was just an unknown to me, even considering that I  
12 have been here for many, many years, I just have not  
13 encountered that issue.

14 There are also other things that may have  
15 occurred from the moment that you received your summons  
16 until this moment. And you may of questions about that.  
17 You may have -- seek answers to some procedure that you  
18 were concerned about. And if that should be the case,  
19 then I am the person that would attempt to answer those  
20 questions. Or if I am unable to do so, I would get an  
21 answer from whoever is in a best position to answer the  
22 questions. And that just helps us with panels to come  
23 in the future.

24 If there were anything -- if there was  
25 anything that you noticed while you were with us --

1 equipment not working or things not going exactly as you  
2 would like -- you bring that to my attention. To the  
3 extent that I can do something about it, I will.

4 I don't know if I mentioned, but this is  
5 only the second jury that I've tried in this new  
6 courthouse. So all of you probably realize that we, for  
7 many years, were in a courthouse that was built in the  
8 1930s. Clearly different architecture, not all this  
9 modern equipment.

10 Many of us got accustomed to the old things  
11 and are still adjusting to the newness of this, but we  
12 are finding that things may not be working quite the way  
13 that we expect them to.

14 So this morning I understand that the coffee  
15 machine wasn't working for you. And I'm told that one  
16 answer is that everything is electric in the building is  
17 based on movement. So when we're not in the room and  
18 we're not moving around, then the lights are not on and  
19 probably nothing else that needs electricity is working.  
20 So I don't know if that's the problem with the coffee  
21 machine, but I am prepared to order a traditional coffee  
22 machine so that in the future jurors who come won't have  
23 that problem. They'll have another alternative.

24 Our bailiff solved the problem for you, as I  
25 understand, and just let those of you who are coffee

1     drinkers or needed a hot drink, he escorted you  
2     downstairs so that that could happen.

3             So there are lots of small things that those  
4     of us who do this on a daily basis, we get so accustomed  
5     to that we may not even notice the things that you  
6     notice when you're coming into a courtroom, and it is  
7     not the usual activity for you, so you'll notice things  
8     that we don't.

9             So I would love to have you bring those to  
10    my attention.

11            I am available to speak with any of you who  
12    wish to speak with me, but you don't have to stay. You  
13    can always write to me. It may be that it's a beautiful  
14    day outside, and your interest is just getting outside  
15    since you have fulfilled your duties and have been  
16    excused.

17            If you wish to speak to the lawyers, I'm  
18    sure they would be willing to speak to you too. So  
19    that's just for you to tell us.

20            So when the bailiff escorts you out, if any  
21    of you would like to speak with me or like to speak with  
22    the attorneys in the case, let the bailiff know that.  
23    You will have to remain, of course, for that purpose.

24            If, on the other hand, you are just ready to  
25    say good-bye, we understand that. And if there is



1 communication for me, you can always write and I will  
2 respond to you.

3 So we thank you again for your service in  
4 the case. I hope you are feeling good about the service  
5 that you've rendered in terms of serving as a juror in a  
6 case. Without those like yourselves who are willing to  
7 assume this responsibility, the system of justice that  
8 we have in this country would not work because we could  
9 not have jury trials.

10 And not every country has jury trials. We  
11 are actually proud of our system, and we hope you are as  
12 well. And we again thank you for the service that you  
13 have rendered.

14 I'm probably forgetting something. I see  
15 the clerk looking up at me. So what is it that I  
16 forgot?

17 (COURT AND CLERK CONFER.)

18 THE COURT: Ah, so important. So we ordered  
19 lunch for you already. And yesterday I think there was  
20 a slight snag for some of you. You made had  
21 arrangements, I guess, on Friday to have your lunch  
22 yesterday, but then we provided lunch to you yesterday.

23 But lunch has been ordered. So you may  
24 return to the room and eat lunch there, if you wish to  
25 do so. I suppose you could take it with you if it's in

1 a form that you could do that.

2 So if you wish to have lunch -- I don't know  
3 when it will come up, but the clerk can probably tell  
4 us.

5 THE CLERK: Noon.

6 THE COURT: Okay. So it will come up at  
7 noon. So pretty soon. But some of you may just want to  
8 leave. And if that is your desire, you may do that as  
9 well.

10 So that's all I have to say at this point.  
11 But just to thank you again for the service that you  
12 have rendered.

13 It may be that if you go up to the jury  
14 office, return the badges, get information that you may  
15 want for future, then by the time you do that and come  
16 back down the lunch may even be here. So that's an  
17 option as well.

18 I also thank the bailiff for the service  
19 that's been rendered. So here in federal court in civil  
20 cases we typically do not have a bailiff in the  
21 courtroom except when we reach that point that we're  
22 going to have deliberating jurors. And so we thank him  
23 for his service as well.

24 You are now excused.

25 THE CLERK: All rise.

1 (THE JURORS EXIT THE COURTROOM.)

2 THE COURT: So the jury has been excused.  
3 Whether they have questions or want to speak with any of  
4 us, I don't know yet. But the bailiff would tell us  
5 that immediately. And if so then I would make the  
6 necessary arrangements. We would either bring them back  
7 here in the courtroom. Or the last trial that we had,  
8 just about a week or so ago, we were able to go into the  
9 jury room and speak with them.

10 But I have to tell you, it's a pretty small  
11 room. So not large enough to accommodate all of you.

12 So first we'll see if they want to talk to  
13 us. I will make those arrangements. If they don't,  
14 then they will leave the building, and hopefully they  
15 will have the lunch that the government is providing.

16 Are there matters that counsel wish to  
17 address on the record other than to advise me about the  
18 briefing schedule? If you've made a decision on that,  
19 you might just want to put that on the record, or you  
20 may want to file a document with the Court like in the  
21 form of a stipulation that sets forth that information.

22 MR. FAY: Yes, Your Honor. Why don't we do  
23 that. Give me an opportunity to speak with counsel and  
24 see if we can't come up with a schedule and then file a  
25 stipulation.

1 THE COURT: And that's acceptable to the  
2 defense?

3 MR. HUMMEL: Of course, Your Honor.

4 THE COURT: Good.

5 So anything else? If not, then I would ask  
6 that you just wait a few minutes here in the courtroom.  
7 The clerk will tell us if the jurors want to leave now  
8 or would like to speak with us. And as I said, if they  
9 want to speak with Court and counsel, one or the other,  
10 then I will make the necessary arrangements.

11 MR. FAY: Thank you.

12 THE COURT: Thank you. We are in recess  
13 now.

14 (PROCEEDINGS CONCLUDED.)  
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CERTIFICATE OF REPORTER

COUNTY OF LOS ANGELES )  
 ) SS.  
STATE OF CALIFORNIA )

I, SHERI S. KLEEGER, OFFICIAL COURT REPORTER, IN AND FOR  
THE UNITED STATES DISTRICT COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT  
TO SECTION 753, TITLE 28, UNITED STATES CODE, THE  
FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE  
STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE  
ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE  
FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: MARCH 31, 2017

/S/ \_\_\_\_\_

SHERI S. KLEEGER, CSR  
FEDERAL OFFICIAL COURT REPORTER

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<b>/</b>	<b>ABOVE-ENTITLED</b>	<b>B</b>	17:5	11:6, 12:4, 12:5
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